

## Message Text

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 INR-07 NSAE-00 PA-02

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FM AMCONSUL STUTTGART

TO SECSTATE WASHDC 2656

INFO US MISSION USBERLIN 513

AMEMBASSY BONN

AMCONSUL BREMEN

AMCONSUL DUESSELDORF

AMCONSUL FRANKFURT

AMCONSUL HAMBURG

AMCONSUL MUNICH

CINCUSAREUR HEIDELBERG

CINCEUR VAIHINGEN

UNCLAS STUTTGART 1164

FOR POLADS

E.O. 11652: N/A

TAGS: PINS, GW

SUBJECT: BAADER-MEINHOF TRIAL RESUMES AFTER FEDERAL PENAL COURT

REJECTS APPEAL

REF: STUTTGART 1051

SUMMARY: FEDERAL PENAL COURT IN KARLSRUHE HAS RULED BAADER-MEINHOF TRIAL MAY CONTINUE WITHOUT DEFENDANTS. THEY CAN ELECT TO PARTICIPATE. DEFENSE TO APPEAL TO FEDERAL CONSTITUTIONAL COURT. TRIAL RESUMED OCTOBER 28 WITH DEFENDANTS PRESENT. DEFENSE LAWYERS FROM BAADER-MEINHOF-RELATED TRIAL IN KAISERLAUTERN HELP CREATE SCENE. END SUMMARY.

1. THIRD PENAL SENATE OF THE FEDERAL PENAL COURT (BUNDESGERICHTSHOF) IN KARLSRUHE HAS RULED STUTTGART BAADER-MEINHOF TRIAL MAY PROCEED WITHOUT THE DEFENDANTS AS LONG AS INABILITY TO FOLLOW THE TRIAL CONTINUES. DEFENDANTS  
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PERMITTED TO PARTICIPATE IF THEY SO DESIRE.

2. THE PENAL COURT CONCLUDED THE DEFENDANTS WERE RESPONSIBLE FOR THEIR PARTIAL INABILITY TO PARTICIPATE IN THE TRIAL THROUGH THEIR DELIBERATE ACTIONS. IN KARLSRUHE PENAL COURT ALSO SUPPORTED THE STUTTGART COURT'S RULING THAT PAR. 231 (PERMITTING TRIAL TO CONTINUE WITHOUT PRESENCE OF DEFENDANTS IF THEY ARE RESPONSIBLE FOR THEIR INABILITY TO PARTICIPATE) WAS APPLICABLE EVEN THOUGH IT TOOK INTO ACCOUNT THE BEHAVIOR OF THE DEFENDANTS PRIOR TO THE EFFECTIVE DATE OF THE PROVISION. THE COURT REASONED THAT IT WAS ONLY A PROCEDURAL AND NOT A PENAL REGULATION AND THUS NOT INAPPROPRIATE TO USE IT RETROACTIVELY.

3. THE COURT ALSO REJECTED DEFENSE EFFORT TO EASE PRISON CONDITIONS BY REASONING THAT DEFENDANTS THEMSELVES HAD MADE SUCH CONDITIONS NECESSARY. WHAT DEFENDANTS ACTUALLY WANTED, SAID THE COURT, WAS TO BE ABLE TO CONTINUE ORGANIZING THEIR GROUP, INCLUDING PLANS TO ESCAPE. SUCH LATITUDE WOULD MAKE CONTINUATION OF THE TRIAL IMPOSSIBLE. 4. DEFENSE LAWYERS HAVE ANNOUNCED THAT THEY WILL APPEAL AGAINST THE RULING OF THE PENAL COURT BEFORE THE FEDERAL CONSTITUTIONAL COURT.

5. WITH DEFENDANTS PRESENT, TRIAL RESUMED ON OCTOBER 28 BUT NOT WITHOUT INCIDENT. NUMBER OF LAWYERS FROM BAADER-MEINHOF-RELATED TRIAL IN KAISERSLAUTERN CREATED DISTURBANCES IN ATTACKING PRESIDING JUDGE PRINZING. RENEWED CHARGES OF PREJUDICE AIMED AT PRINZING. BAADER, BECAUSE OF INSULTS, EXCLUDED FROM TRIAL FOR REMAINDER OF WEEK. OTHER DEFENDANTS SUBSEQUENTLY LEFT COURTROOM VOLUNTARILY.

COMMENT: MANY OBSERVERS BELIEVE KARLSRUHE PENAL COURT MADE ONLY RULING POSSIBLE. PRINZING'S COURT WAS SUSTAINED ON ALL COUNTS. BY GIVING PRISONERS OPTION OF PARTICIPATING IF THEY SO DESIRED, COURT PUTS ONUS ON THEM REGARDING PARTICIPATION OR NON-PARTICIPATION. THIS RULING, HOWEVER, KEEPS OPEN THE POSSIBILITY THAT PRISONERS MAY STILL HAVE TO BE FORCIBLY EXCLUDED BECAUSE OF THEIR ACTIONS. IT IS ALSO POSSIBLE, AND EVEN LIKELY, THAT DEFENSE WILL ATTEMPT TO USE RULING ON SELECTIVE PRESENCE AS A NEW WEAPON TO FURTHER PROCEDURALLY DELAY AND DISRUPT THE TRIAL, THERE BEING NO INDICATION THAT

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THE DEFENSE IS CONTEMPLATING A CHANGE OF TACTICS AT THE MOMENT. JENKINS

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